

**ATTORNEY'S DOCKET NUMBER: 0492611-0506 (MIT 9926)**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Chen, <i>et al.</i>	Examiner:	McGarry, Sean
Serial Number:	10/674,159	Art Unit:	1635
Filed:	September 29, 2003		
Title:	"Influenza Therapeutic"		

Mail Stop: Amendment  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO NOTICE OF NON-RESPONSIVE REPLY**

Applicant hereby responds to the Notice of Non-Responsive Reply issued July 30, 2008 in the above-referenced case. The deadline for responding to the Notice without fees is August 30, 2008. Applicant, therefore, submits that the present response is timely filed on Friday, August 22, 2008.

Applicant thanks the Examiner for a voicemail message on August 19, 2008, which further clarified what the Examiner is looking for in response to the Restriction Requirement. Applicant's understanding of the Examiner's message is that the Examiner will examine all of the pending claims (*i.e.*, 1-48, 59-88, 90-104, 112-117, 145, 165-193, and 201) as they relate to the single species elected by the Applicant (*i.e.*, SEQ ID NOs: 43, 93, 94, and 188, which represent sense, antisense, and target sequences from the influenza NP gene). If the elected species is found to be clear of the art, the Examiner will examine all of the linking claims broadly, and not solely as they relate to the elected species. If the linking claims are found to be allowable, then the Examiner will withdraw the restriction between the elected and non-elected species.

Therefore, it is Applicant's understanding that when the Examiner requests that Applicant identify claims that "embrace" the elected species rather than claims that "recite" the elected species, the Examiner is asking Applicant to identify any claim(s) broad enough to encompass the elected species. Applicant respectfully requests that the Examiner confirm this

understanding. In light of this understanding, Applicant offers the following observations in response to the Examiner's request.

Claims 29 and 30 clearly *do not* encompass the elected invention, as they are related to compositions that target different influenza genes.

It is Applicant's view that all other pending claims do encompass the elected species and should properly be examined with regard to the elected species. If this is what the Examiner means by "embrace," then Applicant submits that claims 1-28, 30-48, 59-88, 90-104, 112-117, 145, 165-193, and 201 all "embrace" the recited species.

The Examiner has asked specifically about claims 20 and 21, which recite compositions that target genes of influenza A and influenza B, respectively. As both influenza A and influenza B have NP genes, it is Applicant's view that these claims should both be examined together with the rest of the case. However, Applicant notes that the particular sequences elected are identical to those found in an isolate of influenza A. Should the Examiner require further restriction/election between claims 20 and 21, then Applicant submits that claim 20 should be examined.

Applicant also notes that claims 70-75 recite siRNA/shRNA analogs. Once again, Applicant respectfully submits that such claims can properly be examined together with other claims relating to compositions that target influenza NP genes. Most of these claims recite modifications that do not alter sequence (e.g., substitution of a deoxyribonucleotide for a ribonucleotide [claim 75], 2' nucleotide modifications [claim 74], *etc.*). Thus, Applicant respectfully submits that these claims should be examined together with the rest of the case.

Applicant sincerely hopes that the Examiner now has sufficient information to undertake substantive examination of the case and again invites the Examiner to telephone with any additional questions. Applicant is mindful of the need for a complete written record, but offers the perspective that confusion and misunderstanding might better be resolved by conversation, which can then be recorded in a single accurate and informative written document in the record rather than a series of opaque written exchanges.

Please charge any necessary fees or credit any overpayments to our Deposit Account No. 03-1721.

Respectfully submitted,

/BHJarrell/

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